

ORIGINAL
DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

NOV - 6 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Pay)
Telephone Reclassification)
and Compensation Provisions)
of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

REPLY COMMENTS OF WORLDCOM, INC.

Richard S. Whitt
1120 Connecticut Avenue, NW
Suite 400
Washington, D.C. 20036

Douglas F. Brent
9300 Shelbyville Road
Suite 700
Louisville, Kentucky 40222

November 6, 1997

No. of Copies rec'd 0-4
List ABCDE

SUMMARY

WorldCom urges the Commission to immediately rescind the Common Carrier Bureau's "limited" waiver order, and deny the ILECs' requests for a blanket waiver of the payphone ANI signalling requirements imposed by the Commission in this proceeding. The ILEC commenters in this proceeding failed utterly to present any arguments or evidence that could support the granting or continued maintenance of any such waiver.

The Commission must keep in mind that the only issue presented for resolution in this proceeding is whether the ILECs have satisfied the requisite legal requirements to obtain a waiver from the Commission (and, indeed, to retain the temporary waiver they already have received from the Bureau). If the ILECs cannot meet those standards, their requests must be denied. Rather than try to justify their waiver requests, however, the ILEC commenters instead try to contest the content and applicability of the very rule they seek to have waived. By doing so, the ILECs confirm WorldCom's view that their "waiver" requests are in fact not seeking waivers at all, but rather an untimely and unsupported reconsideration of the FCC's Reconsideration Order. Despite the ILECs' concerted efforts, however, there is no doubt that the ANI signalling requirement applies to the ILECs, and that post hoc challenges to that requirement must be rejected as untimely and irrelevant.

The ILECs also fail to raise any compelling arguments that their waiver requests are supported by good cause. In fact, WorldCom believes it is manifestly against the public interest, and unsupported by any good cause, for the ILECs to be rewarded for their malingering by relieving them, even temporarily, of their obligation to provide payphone-specific ANI digits. In contrast, it is in the public interest for the Commission to allow facilities-based IXC's and others to commence paying per-call compensation for those calls that, on a real-time basis, can

be recognized and tracked as payphone calls, can be blocked, and can be collected from reseller carriers and (as surcharges) from retail customers. The ILECs' eleventh hour waiver requests, if granted, would completely eviscerate the underlying basis for the Commission's "market-based" payphone compensation scheme, and would have a deleterious impact on the rest of the telecommunications industry and consumers. Accordingly, the ILECs' waiver requests lack good cause, are entirely inconsistent with the public interest, and cannot be granted.

Nonetheless, should the Commission decide to temporarily relieve the ILECs of their obligation to provide payphone-specific ANI digits, payor carriers also should be excused concomitantly from paying compensation on any call not carrying a payphone-specific ANI designation. Instead, the PSPs should be able to recover that compensation from the offending parties here -- the ILECs. This balancing of equities would allow PSPs to receive per-call compensation as scheduled, protect the legitimate reliance interests of payor carriers, and give the ILEC PSPs the necessary financial incentives to complete their obligation. In any event, the ILECs should not be able to receive compensation for any payphones they own and operate that do not carry the correct ANI designation.

TABLE OF CONTENTS

PAGE

| | | |
|------|--|----|
| I. | INTRODUCTION AND SUMMARY | 1 |
| II. | THE COMMISSION SHOULD DENY THE ILEC'S SO-CALLED "WAIVER" REQUESTS AND IMMEDIATELY RESCIND THE BUREAU'S ILL-CONSIDERED "LIMITED" WAIVER ORDER | 3 |
| A. | The ILECs Cannot And Should Not Be Allowed To Evade The Fact That The Commission Established A Crystal-Clear Obligation To Provide Payphone-Specific ANI Digits | 3 |
| B. | The Commission Should Reject The Waiver Petitions For Failure To Demonstrate Good Cause, And Rescind The Bureau's Waiver Order So That The ILECs Are Not Allowed To Profit From Their Act Of Collective Noncompliance | 8 |
| 1. | The ILEC Waiver Requests Are Not Supported By Good Cause And Otherwise Are Not In The Public Interest | 8 |
| 2. | The ILECs' Arguments Are Inconsequential And Incorrect | 12 |
| III. | CONCLUSION | 16 |

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

| | | |
|-----------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| Implementation of the Pay |) | |
| Telephone Reclassification |) | CC Docket No. 96-128 |
| and Compensation Provisions |) | |
| of the Telecommunications |) | |
| Act of 1996 |) | |

REPLY COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its undersigned counsel, hereby responds to the initial comments submitted by other parties concerning the Public Notice, DA 97-2214, issued by the Commission on October 20, 1997 in the above referenced proceeding. The initial comments filed by WorldCom and other parties demonstrate that the Commission should rescind the Common Carrier Bureau's "limited" waiver order, and deny the incumbent local exchange carriers' ("ILECs") requests for a blanket waiver of payphone automatic numbering identification ("ANI") signalling requirements imposed in this proceeding.

I. INTRODUCTION AND BACKGROUND

As WorldCom explained in its initial comments,¹ the per call compensation plan adopted by the Commission provides a method for payphone providers to be compensated for the use of their property to make non-coin calls. The plan is premised, however, on the assumption that compensation rates will ultimately be determined by location owners who will be under market pressure to set rates that payphone users and toll free service subscribers will

¹ Comments of WorldCom, Inc., CC Docket No. 96-128, filed October 30, 1997, at 2-3.

tolerate. The plan depends on four interdependent features: (1) the end user's ability to choose whether or not to make a payphone call; (2) the payphone service provider's ("PSP") obligation to purchase from the ILEC a service which will allow it to identify its phone using network signalling at the time a call is made; (3) the obligation of ILECs to provide to PSPs the service they need to provide payphone specific coding digits as part of the payphone ANI; and (4) the obligation of facilities-based carriers to (a) recognize the specific payphone coding digits which identify compensable calls originating from payphones, (b) block these calls if a customer requests, (c) collect the compensation amount from carriers which do not have facilities, and (d) collect compensation expenses on a per-call basis from retail customers.

Each one of the "waiver" requests submitted by the ILECs is in fact not seeking a waiver at all, but rather an untimely and unsupported reconsideration of the FCC's Reconsideration Order of exactly one year. In essence, the ILECs seek to be relieved, at least temporarily, of the third (and their only) obligation of providing payphone-specific ANI digits, while still requiring facilities-based IXC's and others to continue to pay compensation, even for calls that, on a real-time basis, are not recognized and tracked as payphone calls, cannot be blocked on a real-time basis, cannot be collected from reseller carriers, and cannot be collected as surcharges from retail customers. Thus, even if the ILECs' eleventh hour petitions and letters could be construed as waiver requests, they are so overbroad as to have the effect of eviscerating the entire call tracking system which lies at the heart of the Commission's "market-based" per-call compensation scheme. Accordingly, the ILECs' requests lack "good cause," are inconsistent with the public interest, and thus cannot be granted.

II. THE COMMISSION SHOULD DENY THE ILECs' SO-CALLED "WAIVER" REQUESTS AND IMMEDIATELY RESCIND THE BUREAU'S ILL-CONSIDERED "LIMITED" WAIVER ORDER

The Commission must keep in mind that the only issue presented in this proceeding is whether the ILECs have satisfied the requisite legal requirements to obtain a waiver from the Commission (and, indeed, to retain the temporary waiver they have already received from the Bureau). If the ILECs meet that substantial legal burden, their waivers should be granted; if not, the requests must be denied. Rather than craft arguments in an effort to meet the waiver standards, however, the ILEC commenters instead try to contest the content and applicability of the very rule they seek to have waived, and then attempt to change the subject by casting various aspersions at all parties but themselves. To WorldCom's knowledge, such a display has never been held by any agency or court to satisfy the legal and regulatory requirements for a waiver; in fact, courts uniformly have held that collateral attacks disguised as waiver petitions must fail. As WorldCom explains below, it is obvious that the ANI signalling requirement applies to the ILECs, and that the ILECs cannot manage to raise any compelling arguments to support granting a waiver of that requirement.

A. The ILECs Cannot And Should Not Be Allowed To Evade The Fact That The Commission Established A Crystal-Clear Obligation To Provide Payphone-Specific ANI Digits

The ILECs first argue, disingenuously, that they should be relieved of their obligation to provide payphone-specific coding digits as part of the payphone ANI because somehow they did not understand the Commission to be requesting such a result. Among other flaws, this attempt at historical revisionism is contrary to the ILECs' own contemporaneous

assertions at the time, as WorldCom pointed out in its initial comments.² The Commission's

Reconsideration Order in this proceeding could not be more clear:

Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line. We also clarify, pursuant to a request by MCI, that LECs must make available to PSPs, on a tariff basis, such coding digits as a part of the ANI for each payphone. We decline to require PSPs to use COCOT lines, as suggested by the RBOCs, because we have previously found that COCOT service is not available in all jurisdictions.³

Faced with this unambiguous dictate, TDS Communications insists that the language is "far from clear," and that "carriers such as TDS have reasonably read it, within the context of prior Commission orders in this proceeding, to allow either a LIDB [line information data base] or Flex ANI approach."⁴ This is sheer nonsense. The phrase "as a part of the ANI" requires that the ILECs implement a specific approach to coding information as a part of the ANI that is transmitted from the ILECs' central offices. The Commission could not have been any clearer.

Rather than face up to the plain language of the Reconsideration Order, several ILECs resort to pointing the finger elsewhere. For example, US WEST, SNET, and TDS claim that another Commission order, the OLS Third Report and Order in CC Docket No. 91-35,⁵

² WorldCom Comments at 3-4.

³ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, at para. 64 (emphasis supplied) ("Reconsideration Order").

⁴ TDS Comments at 3.

⁵ Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order, FCC 96-131, 11 FCC Rcd 17021 (rel. April 5, 1996) ("OLS Third Report and Order").

somehow altered the obligation that ILECs provide "coding digits as a part of the ANI for each payphone." US WEST asserts that the OLS Third Report and Order "allowed carriers the option of selecting OLNS or Flex ANI and indicated that either solution would be sufficient to identify payphones for per-call compensation purposes."⁶ Interestingly, US WEST offers no specific page or paragraph citations to support this view of the order. WorldCom can find nothing in the Commission's order that would even remotely approximate US WEST's statement, and invites US WEST to provide such a citation. SNET also claims that the OLS Third Report and Order gave ILECs the option of choosing either Flex ANI or an Originating Line Screening ("OLS") service offered through LIDB to identify privately-owned payphones,⁷ but does not show that this requirement is involved in any way in the payphone compensation proceeding. Likewise, TDS, while making a considerable deal of the fact that the OLS Third Report and Order allows the ILECs to use LIDB-based services to provide a billed number screening ("BNS") system, fails to relate this ruling to the payphone compensation proceeding. Indeed, as APCC correctly points out, the ILECs' "legal rationale for how OLNS complies with the Payphone Order is murky at best...."⁸

SNET looks for support in a more recent FCC order in CC Docket No. 91-35 which granted various ILEC waiver requests related to OLS implementation.⁹ However, that OLS Waiver Order completely extinguishes any ILEC claim about reliance on CC Docket No.

⁶ US WEST Comments at 2.

⁷ SNET Comments at 2.

⁸ APCC Comments at 10.

⁹ SNET Comments at 4-5.

91-35 for guidance in complying with the plain requirements of the Reconsideration Order. As WorldCom pointed out in its August 27, 1997 ex parte letter in this proceeding (attached herein),¹⁰ the Common Carrier Bureau, while granting delays related to implementation of required OLS services, warned SNET and other ILECs that:

the extensions granted today do not alter or otherwise modify any obligations of these or other LECs under the Commission's Payphone Order and the Payphone Reconsideration Order.¹¹

Thus, no aspect of the OLS proceeding excuses the ILECs from complying with paragraph 64 of the Reconsideration Order. Certainly the need for any emergency waiver should have been readily apparent, at the absolute latest, when the Bureau issued its OLS Waiver Order in July.

In addition to pointing the finger backwards, the ILECs also seek to invoke possible future Commission action as yet another reason to excuse their malingering. US WEST, citing one paragraph in the Bureau's Payphone Waiver Order,¹² apparently believes that "the Commission has indicated that it will be investigating the payphone specific digit requirement further,"¹³ and urges the Commission not to act on AT&T's request for a modification of the current waiver because it "might prejudice the outcome of the Commission's

¹⁰ See Attachment A (Ex Parte letter from Douglas F. Brent and Richard S. Whitt, WorldCom, Inc., to William F. Caton, Secretary, FCC, CC Docket No. 96-128, August 27, 1997, at 5 ("WorldCom Ex Parte Letter")).

¹¹ Petitions Pertaining to Originating Line Screening Services, CCB/CPD File No. 96-18, Order, DA No. 97-1646 (rel. July 31, 1997) at 4 ("OLS Waiver Order").

¹² Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-2162, released October 7, 1996 ("Payphone Waiver Order").

¹³ US WEST Comments at 2.

investigation into the transmission of payphone specific digits."¹⁴ However, the cited paragraph only discusses the treatment of non-equal access switches, which is relatively non-controversial and certainly is not the primary focus of the waivers, or the ILECs' arguments.¹⁵

Similarly, NECA refers to the Payphone Remand Order for the proposition that the Commission "has not yet clarified the specific coding digit requirements ... but states that it will address such issues in a subsequent order."¹⁶ NECA overlooks the fact that any need on the Commission's part to "address such issues" is the result of the ILECs' noncompliance, not the cause of it, so future Commission action cannot excuse past ILEC inaction. Moreover, the Commission does not actually state in the Payphone Remand Order that the payphone ANI digits requirement is open for change, but merely will be "addressed."¹⁷ Indeed, the Commission cannot now decide to alter the ANI signalling requirement because it has not indicated in any formal way that this issue is unresolved or otherwise subject to revision.

Thus, the question of how the ILECs must identify payphones was answered definitively in the Reconsideration Order. The ILECs did not appeal that decision or seek reconsideration, the issue was not addressed by the D.C. Circuit or in the Commission's subsequent remand order, and nowhere has the Commission sought additional comments on the

¹⁴ US WEST Comments at 2-3.

¹⁵ See Payphone Waiver Order at para. 15 ("We will be addressing in a separate order the issues raised by parties regarding the provision of payphone-specific coding digits by non-equal-access switches." (emphasis added)).

¹⁶ NECA Comments at 2 n.5; see Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Second Report and Order, FCC 97-371, October 9, 1997 ("Payphone Remand Order").

¹⁷ See Payphone Remand Order at para. 133 ("We plan to address payphone-specific coding digit issues in a subsequent order");

point.¹⁸ Unless and until the Commission complies with the Administrative Procedures Act by giving formal notice that this issue is being considered for further public comment -- which it certainly should not do at this late date -- the ILECs cannot be allowed to rest their hopes for deliverance on the mere possibility of future Commission action. In short, WorldCom agrees with APCC that "there is no longer even a bad excuse for LECs to delay further their compliance with the Payphone Orders."¹⁹

B. The Commission Should Reject The Waiver Petitions For Failure To Demonstrate Good Cause, And Rescind The Bureau's Waiver Order So That The ILECs Are Not Allowed To Profit From Their Act of Collective Noncompliance

1. The ILEC Waiver Requests Are Not Supported By Good Cause And Otherwise Are Not In The Public Interest

Given the fact that the Commission's Reconsideration Order required the ILECs to perform a task which they have failed to complete, if not even acknowledge, the only question that must be answered in this proceeding is whether, under the Commission's rules, there is "good cause" for the Commission to grant a waiver of the ANI signalling requirement.²⁰ As WorldCom pointed out in its initial comments, none of the three so-called waiver requests filed by USTA, TDS, and the LEC ANI Coalition meet that standard.²¹ Nor do any of the ILECs'

¹⁸ In fact, the Public Notice only seeks comments on the ILECs' requests to temporarily waive application of the rule, not completely alter the substance of the rule itself. See Public Notice at para. 1 ("This Public Notice seeks comments on those waiver requests.").

¹⁹ APCC Comments at 17.

²⁰ 47 C.F.R. Section 1.3 (1997).

²¹ WorldCom Comments at 7-10.

requests satisfy procedural requirements imposed by the federal courts.²² Thus, the waiver requests must be summarily rejected as insufficient and otherwise contrary to the public interest.

Initially, none of the ILEC commenters address the fact that the waiver requests are so broad in their desired effect that they go to the underlying basis of the tracking rules, and therefore can only be addressed as part of rulemaking. To the contrary, APCC agrees with WorldCom that, to the extent the Commission grants industry-wide waivers of its ANI signalling rule, it will "rob its rule of any vitality."²³ The temporary nature of the relief requested does not cure the problem.

The Commission has traditionally avoided granting waivers which would have the effect of eviscerating a rule, or which would unduly prejudice other parties protected by a rule.²⁴ Granting the ILECs' waivers in this proceeding would have both deleterious effects. As the Commission stated in Riverphone, the function of a waiver is not to change the general standard -- a matter for which the opportunity for general comment is a prerequisite under the Administrative Procedure Act -- but to justify an ad hoc exception to that standard in a particular case.²⁵ WorldCom does not believe that Riverphone would allow an exception that will essentially allow an entire industry to evade the intended effect of an existing rule.

²² WorldCom Comments at 10-11.

²³ APCC Comments at 12.

²⁴ See, e.g., In the Matter of Applications for Authority to Construct and Operate An Automated Maritime Telecommunications System Using the Group C channels by Riverphone, Inc. T/A Maritel, 3 FCC Rcd. 4690, 1988 WL 489387 (1988) ("Riverphone"); In the Matter of 1997 Annual Access Tariffs, 12 FCC Rcd 8458 (C.C.B. 1997); In the Matter of AT&T Communications Revisions to Tariff F.C.C. Nos. 1 et al, 4 FCC Rcd 4475 (1989).

²⁵ Id.

The Commission has articulated its standard in no uncertain terms:

The standard of good cause requires the petitioner to demonstrate that special circumstances warrant deviation from the rules or orders and that such a deviation would better serve the public interest than the general rule. Moreover, grant of a waiver presumes the validity of the general rule, must not undermine the policy served by the rule, and must not be so broad as to eviscerate the rule. Rather, the request must be tailored to the specific contours of the exceptional circumstances.²⁶

Thus, the Commission is allowed to grant waivers only if special circumstances warrant a deviation from the general rule, and if such deviation will serve the public interest.²⁷ According to the Bureau's Waiver Order, the special circumstances justifying the waiver consist only of the fact that the ILECs are "not yet ready" to transmit payphone-specific ANI coding digits for certain phones.²⁸ This explanation falls far short of what the Commission is required to find to sustain a waiver request. Mere conclusory statements are not sufficient to satisfy the WAIT Radio standard which governs waiver requests.

Further, if the Commission were to grant the ILECs' waivers, it will prejudice the rights of WorldCom, other payors, and all customers of toll free and calling card services. WorldCom highlighted those very real and unmitigated harms in its initial comments, pointing out that payor carriers, which have acted in reliance on the Commission's orders, would be unable to identify, track, block, pay compensation, and pass along surcharges on a real-time

²⁶ In the Matter of Southwestern Bell Telephone Company, CC Docket No. 97-158, 1997 WL 392246, at para. 13 (1997).

²⁷ WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969); see also Northwest Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1167 (D.C. Cir. 1990).

²⁸ Waiver Order at para 10.

basis.²⁹ The important point is that the ILEC commenters do not bother to address this crucial consideration.

The Commission certainly must also take into account the fact that, faced with the unequivocal mandate of the Reconsideration Order, the ILECs chose simply to do nothing. They did not seek further reconsideration, they did not file an appeal, and -- most unfortunately for PSPs, IXC's, and consumers -- they did not bother to comply. Unfortunately, the temporary waiver granted by the Bureau is nothing more than a reward to the ILECs for openly flouting the Commission's rules. The Commission should immediately rescind that decision, which was reached at the last minute without sufficient record evidence or benefit of the rest of the industry's views, and leave the ILECs to deal with the consequences of being mired in an untenable situation of their own creation.

In its initial comments, WorldCom explained that, unlike the ILECs, IXC's such as WorldCom have spent millions of dollars in preparation to track payphone calls in order to provide compensation on a per-call basis.³⁰ Also unlike the ILECs, WorldCom made these plans in full good-faith reliance on the Commission's assurance in the Reconsideration Order that the ILECs would be required to provide "coding digits as a part of the ANI for each payphone." As a result, WorldCom established its tracking system, on a real-time basis, to identify, track, and pay compensation on each and every telephone call that carries, as part of its ANI, the payphone-specific info digits. These plans have now been thrown into complete disarray as a result of the ILECs' untimely waiver requests, and the Bureau's last-hour waiver order. The

²⁹ WorldCom Comments at 8-9.

³⁰ WorldCom Comments at 4-5.

Commission will send precisely the wrong message if it were to pull the rug out from under WorldCom, other payor carriers, and all their millions of retail customers and resale carrier customers, for making the mistake of taking the Commission at its word.

In short, the waiver requests, as well as the Waiver Order itself, fail the Commission's waiver standards and must be rejected. Grant of these waivers would serve only the private pecuniary interests of the ILECs and PSPs, and in effect reward the ILECs for their intransigence in the face of this Commission's clear, valid orders. A waiver also would cause substantial and untoward harm to the interests of payor carriers and their millions of consumers across the country.

2. The ILECs' Arguments Are Inconsequential And Incorrect

To no one's great surprise, the comments filed by the "LEC Payphone Coalition" -- not to be confused with the entirely separate and independent "LEC ANI Coalition," -- support the petitions filed by the LEC ANI Coalition, USTA, and TDS. The Coalition, in arguing that the Commission should grant the ILECs' waivers, makes a series of gratuitous and unsupported comments and observations that are completely unrelated to the issue of whether their waiver requests should be granted. Indeed, from the demanding tone of the comments, it is sometimes necessary to remind oneself that the ILECs are in fact the non-complying parties here, while the PSPs, IXC's -- and, most importantly, the American consumers -- are the victims of the ILECs' gamesmanship. While WorldCom does not believe the Commission will take any of the Coalition's observations seriously, it is enough to identify them in order to understand

how the waiver requests themselves lack any factual foundation, and therefore should be denied for failing to demonstrate "good cause."³¹

First, the LEC Coalition claims that "the industry is working towards an industry-wide resolution of this matter..."³² Of course, if this had been the case since last November, the ILECs would not now be seeking a waiver in the first place. The Commission should also note that "the industry" referred to by the Coalition is in fact only the ILECs; most of the rest of "the industry" (all non-ILECs) has been hard at work in preparation for per-call compensation.

Next, the LEC Coalition states that any harm to the IXC's by requiring them to pay per-call compensation on calls they would be unable to block is "less than the potential harm to PSPs of delaying per-call compensation."³³ The ILECs here merely parrot the scanty reasoning (as it were) of the Bureau's Waiver Order,³⁴ without making any independent points that would actually justify this astonishing statement. As WorldCom has already demonstrated, in its ex parte letter, its initial comments, and now here, IXC's and their customers will suffer substantial, unmitigated harm as a result of granting the ILECs' waivers. In short, IXC's will be unable to identify, track, block, pay compensation, and pass along surcharges on anything like a real-time basis. At the same time, WorldCom does not suggest that independent PSPs necessarily should suffer the harm of losing per-call compensation solely as a result of the

³¹ 47 C.F.R. Section 1.3 (1997).

³² LEC Payphone Coalition Comments at 2.

³³ LEC Payphone Coalition Comments at 2-3.

³⁴ Waiver Order at para. 13.

ILECs' failures. There certainly are other alternatives available that would both prevent this harm and preserve the integrity of the Commission's decisionmaking process by holding the offending parties responsible for their (in)actions.

Further, the LEC Coalition insists that, aside from AT&T,³⁵ "other interexchange carriers" (citing only Telco Communications and American Network Exchange, Inc.) will have "no trouble paying per-call compensation based on LEC ANI lists."³⁶ Later on the Coalition recharacterizes this universe of two relatively small carriers as "virtually every other IXC" beside AT&T,³⁷ and still later argues (again without substantiation) that AT&T's proposed waiver should apply only to AT&T and Frontier because "most IXCs do not need payphone-specific digits to track and pay per-call compensation."³⁸ This claim is untrue, at least in the case of WorldCom. In late August, WorldCom demonstrated to the Commission in great detail that it has established its call tracking system precisely on the basis of receiving payphone-specific ANI digits.³⁹ Any other alternative -- whether LIDB-based OLNS, LEC ANI lists, or anything else the ILECs can dream up -- would not meet the mandate of the Reconsideration

³⁵ When it suits their interests, the Coalition insists on treating AT&T as if it were the living embodiment of the literally hundreds of other IXCs that are directly affected by the payphone compensation rules, and any waiver that the Commission grants. WorldCom respectfully suggests that the Coalition refrain from viewing all IXCs as one monolithic block named AT&T.

³⁶ LEC Payphone Coalition Comments at 3.

³⁷ LEC Payphone Coalition Comments at 4.

³⁸ LEC Payphone Coalition Comments at 5.

³⁹ WorldCom Ex Parte Letter at 2-5.

Order, and would require WorldCom to expend considerable additional time and resources to implement.⁴⁰

The Coalition next "would like to remind the Commission that AT&T and other IXC's have engaged in outright defiance of the Commission's payphone compensation orders" because they have "repeatedly refused to pay amounts that are owed to [PSPs]...."⁴¹ WorldCom suggests that it would be entirely inappropriate for the Commission somehow to take into account, formally or otherwise, the fact that the D.C. Circuit vacated the Commission's payphone orders on several grounds. WorldCom thus far has not paid interim, per-phone compensation to the PSPs because it has been under no legal obligation to do so. Nonetheless, WorldCom has spent considerable resources to prepare to pay per-call compensation to all PSPs, based on the payphone-specific ANI digits that the Commission mandated in its Reconsideration Order. Indeed, it is the ILECs who stand in "outright defiance of the Commission's payphone compensation orders," and who seek to cast aspersions upon everyone but themselves for their own failings.

Confronted with AT&T's own waiver request to pay per-phone compensation on non-compliant payphones, the Coalition demonstrates its obstinance by demanding that AT&T's request be bound by no fewer than six separate conditions, the first of which is to unilaterally reverse the D.C. Circuit's vacation decision by requiring "prompt payment of all interim

⁴⁰ Among other drawbacks, of course, ILEC-provided ANI lists do not allow real-time tracking and blocking of payphone calls, and make it far more difficult for IXC's to pass along surcharges to retail and resale customers.

⁴¹ LEC Payphone Coalition Comments at 4.

compensation."⁴² WorldCom urges the Commission to reject the ILECs' irrelevant wish list as any part of AT&T's request.

Amidst all the historical revisionism and endless demands in the LEC Coalition's comments, WorldCom can agree wholeheartedly with at least one statement: "it would be inequitable to deny PSPs per-call compensation while these implementation issues are being resolved" (or, more accurately, rewritten).⁴³ The solution to this dilemma is simple, and entirely equitable. If the Commission decides to extend the period for ILECs to comply with the payphone signalling requirement, it must also excuse carriers from paying compensation on calls from payphones which do not have the proper signalling in place. This balancing of interests would protect the carrier payors and would give the ILEC PSPs the proper financial incentives to complete their obligations. Independent PSPs affected by ILEC delays could look to the ILECs for any damages they may have incurred. APCC argues that the Commission should allow PSPs to file complaints against an ILEC for the full amount of payphone compensation that would have been received from the payors if that ILEC had complied with the payphone compensation requirements.⁴⁴ WorldCom wholeheartedly concurs.

III. CONCLUSION

In sum, there is no factual or legal foundation for the Commission to maintain the Bureau's temporary waiver, let alone to grant the further waivers sought by the ILECs. If the

⁴² LEC Payphone Coalition Comments at 5.

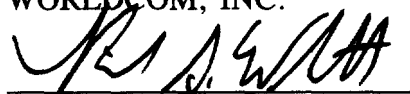
⁴³ LEC Payphone Coalition Comments at 2.

⁴⁴ APCC Comments at 17-18.

Commission does not vacate the temporary waivers improperly granted by the Bureau, then the Commission must make clear that payors have no obligation to compensate payphone owners whose phones are subject to the waiver.

Respectfully submitted,

WORLD COM, INC.



Richard S. Whitt
1120 Connecticut Avenue, NW
Suite 400
Washington, D.C. 20036

Douglas F. Brent
9300 Shelbyville Road
Suite 700
Louisville, Kentucky 40222

November 6, 1997

ATTACHMENT A

COPY



1120 Constitution Avenue NW
Suite 1200
Washington, D.C. 20004
(202) 774-1770
(202) 774-1771 FAX

August 27, 1997

RECEIVED

AUG 27 1997

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street NW
Room 222
Washington, D.C. 20554

**Re: CC Docket No. 96-128 -- ANI Info Digit Requirements for
Per-Call Compensation**

Dear Mr. Caton:

WorldCom, Inc. ("WorldCom") recently became aware of an *ex parte* filing concerning the provision of ANI coding digits filed by the "LEC ANI Coalition" on June 16, 1997. This White Paper on the Provision of ANI Coding Digits ("White Paper") claims to be responsive to concerns raised by AT&T and MCI concerning the insufficiency of ANI info digit pair 07 as a payphone identifier.

In attempting to ostracize AT&T and MCI, the LEC ANI Coalition makes the broad, unsupported statement that "all other compensation payors, including the LECs, Sprint, and Telco, are willing and able to provide per-call compensation based on current technology and standards." White Paper at 13. This is simply incorrect -- in particular, the LEC ANI Coalition does not speak for WorldCom. While WorldCom will begin tracking calls when required, the failure of LECs to make proper coding digits available to PSPs will affect WorldCom just as it affects AT&T and MCI.

As discussed below, WorldCom has identified at least two related, serious problems which would result if ANI info digit 07 were to be treated as an identifier for payphones. Regardless, the Commission's Reconsideration Order in this proceeding makes it clear that payphones which transmit ANI 07 as part of their ANI will not be eligible for per-call compensation effective October 7.

I. THE WHITE PAPER

The White Paper responds to concerns raised by AT&T that some LECs intend to assign ANI 07 to payphone lines. While ostensibly a sober discussion of the technical aspects of providing ANI information, the White Paper's real purpose appears to be an attack on the alleged competitive motivations of MCI and AT&T.

Page 2

Letter to Mr. William F. Caton
Federal Communications Commission
August 27, 1997

This attack is intended to support the LEC agenda of using the Payphone Proceeding to leverage the sale of costly LIDB and/or FLEX ANI services. The White Paper invokes the Enhanced OLS Service Order¹ in an attempt to obfuscate the clear directions of the Commission laid out in its Reconsideration Order.

The central claim of the White Paper is that AT&T and MCI (and presumably WorldCom) should be satisfied to receive ANI 07 as a payphone identifier, because regular comparison of such calls with LEC-provided ANI lists will enable AT&T and MCI to "identify and segregate calls that may have originated on payphones." White Paper at 3 (emphasis added). The White Paper then goes on to make much of the fact that certain small IXCs have asked for permission to begin paying per-call compensation prior to October 7, creating the implication that the issue identified by AT&T is merely a "red herring." Finally, the White Paper states that LECs do not view ANI 07 as an impediment to their own per-call compensation obligations.

II. WORLD COM'S RESPONSE

At first blush it might appear that the ANI 07 info digit pair would be sufficient to help identify payphone calls. This is because, as the White Paper points out, compensation payors will have the opportunity to obtain LEC-provided ANI lists and compare these lists to the call records they have accumulated which bear the ANI 07 identifier. This quarterly comparison could allow the deletion of the many non-compensable calls which will have originated from restricted locations other than payphones.

In proposing such a complicated and burdensome solution, the LEC ANI Coalition has confused the separate and distinct purposes of the info digit and ANI list requirements. Moreover, careful review shows that such a plan would not work.

The only purpose for the quarterly ANI lists during the per-call compensation phase is to determine which PSP is to be paid

1 Policies and Rules Concerning Operator Services and Pay Telephone Compensation, CC Docket No. 91-35, Third Report and Order, FCC No. 96-131, 11 FCC Rcd. 17021 (rel. April 5, 1996)

Page 3
Letter to Mr. William F. Caton
Federal Communications Commission
August 27, 1997

for a given call. Using the lists is the only way to determine which payphone lines belong to a particular PSP.²

Payphone info digits serve a completely different purpose. They identify whether a particular call is compensable. The payphone coding digit requirement clarified in the Reconsideration Order was necessary to ensure that carriers can identify a payphone call in real time, and without reference to other databases.

The LEC ANI Coalition's proposal would not work because WorldCom must know for sure whether a call originated from a payphone as soon as the call is made, not at the end of the next calendar quarter. This is true for two reasons.

First, WorldCom anticipates filing tariff revisions for certain of its retail services to add a pay telephone surcharge. WorldCom must bill its customers such surcharges when the associated call is billed. This means after the current billing cycle closes, which, depending upon the customer, could be as soon as one day after a call is made.

It would be unacceptable to WorldCom or its customers for the company to bill surcharges based solely upon whether the ANI info digit 07 was appended to a call record. WorldCom's customers would quickly identify and complain about surcharges billed in error. WorldCom calling card customers and our subscribers dialing their own 800 or 888 numbers, who will likely try to avoid payphone surcharges (e.g., by making the call from a hotel room rather than a lobby payphone), will be incensed if WorldCom erroneously applies a payphone surcharge to a call which merely originated from a restricted line, like a hotel or hospital room, not a payphone.

Second, the need to bill surcharges in a timely and accurate manner is no less important to the numerous resale carriers who use the WorldCom network for end-to-end transport of their retail toll services. WorldCom will pass through per call compensation expenses to these resale carrier customers. Like WorldCom, these carriers are entitled to recover payphone compensation expenses from their subscribers on a per-call basis.

² During the per-phone interim compensation phase, when identification of specific calls is unnecessary, the lists are being used to verify ANIs submitted by the PSPs in their quarterly billing.